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smcBEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCESUNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	CHRISSAN et al.	Examiner:	Azad, A.
Serial No.:	09/392,124	Group Art Unit:	2654
Filed:	September 8, 1999	Docket No.:	8X8S.239PA
Title:	VARYING PULSE AMPLITUDE MULTI-PULSE ANALYSIS SPEECH PROCESSOR AND METHOD		

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this communication is being deposited via facsimile to telephone number (703)872.9315 to: Mail Stop Appal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 18, 2003.

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REPLY BRIEF

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Sir:

This Reply Brief is submitted in response to the Examiner's Answer dated June 17, 2003, pursuant to 37 CFR § 1.193 for the above-referenced patent application. The Reply Brief is accordingly being filed via facsimile to the above-referenced facsimile number. Appellant respectfully submits that the Examiner's Answer has raised new grounds of rejection, contrary to 37 C.F.R. § 1.193(a)(2), in citing a new reference to support rejection of the claims under appeal and the Official Notice previously taken. Pursuant to § 1.193(b)(1), Appellant requests that the Examiner enter this Reply Brief addressing the new grounds of rejection and withdraw the final rejection (and, if necessary, reopen prosecution). The new grounds of rejection are summarized and addressed below in connection with Appellant's reply arguments relating to these new grounds of rejection and other issues (with reference made thereto).

FAX RECEIVED**AUG 19 2003****GROUP 2600****I. ISSUES AND ARGUMENTS****A. The newly-cited reference (Sklar) was not received by the Appellant and is contrary to 37 C.F.R. §1.193(a)(2).**

On pages 3, 9-10 and 12-13 of the Examiner's Answer, the Examiner newly identifies as Prior Art, Sklar, B., "Digital Communications Fundamentals and Application" Prentice Hall (October 9, 1987), pp. 61-65. The Examiner relies upon this newly-cited reference in support of the "Official Notice" taken in an effort to establish the Section 103(a) rejection. To the best of Appellant's belief and knowledge, this article was neither specifically cited nor attached to any previous official communications from the U.S. Patent and Trademark Office in connection with the present application.

Appellant repeatedly requested corroborating documentation regarding the Examiner's Official Notice, but did not receive documentation or supporting evidence as was required by the Examiner. Appellant therefore respectfully requests that both this Reference and the Official Notices given be wholly removed from consideration in this proceeding. Furthermore, in accordance with 37 C.F.R. § 1.193(b)(1), Appellant requests that the Examiner withdraw the final rejection (and, if necessary, reopen prosecution).

B. The Examiner's characterization of Appellant's invention as equatable to Bialik in the Summary of Invention section of the Examiner's Answer is improper.

On page 2 of the Examiner's Answer, the Examiner characterized the patent application under appeal and the cited '588 Bialik reference as being the same, referencing a comparison between figures in the present application with the '588 reference. Appellant submits that this characterization is confusing, incorrect and unsupported in the '588 reference for the reasons stated in connection with the Section 102 rejections as addressed in the Appeal Brief and further below. For instance, the Examiner has made no reference to the portions of Appellant's summary directed to subject matter including generating a plurality of sequences of variable-amplitude pulses. These and other portions of the Summary as presented in the Appeal Brief, including the

portions ignored in the Examiner's answer, describe the invention in a manner consistent with the requirements set forth in the M.P.E.P.

C. The cited portions of the '588 reference do not completely correspond to the claimed limitations as asserted by the Examiner (relevant to the Section 102 and 103 rejections).

The Examiner's assertions regarding the teachings of the '588 reference are improper and contrary to the plain language of the '588 reference; Appellant maintains that the cited portions thereof fail to completely correspond to the claimed limitations of the present invention. Specifically, no part of the '588 reference teaches or suggests the claimed limitations directed to analyzing variable-amplitude pulses and outputting a signal in response thereto. While different sequences of pulses in the '588 reference may teach different amplitudes, it does not teach or suggest different amplitudes within a single sequence. For example, the gain level referred to in the '588 reference and as cited on page 10 of the Examiner's Answer does not teach different pulses in a single sequence having different amplitude. Rather, the gain levels are individually applied to achieve a sequence of equal-amplitude pulses (*see, e.g., col. 4, lines 20-24*).

It appears that the Examiner is confusing a sequence of variable-amplitude pulses (*e.g., pulses of different amplitude within a single sequence*) with different sequences of equal-amplitude pulses (*pulses of the same amplitude within a single sequence*). For example, the Examiner improperly asserted that "applicant does not claim 'the amplitude of the pulses within a single sequence are different' instate (sic) the applicant claimed as 'each sequence having a different average amplitude value....'" Appellant submits that this interpretation is clearly incorrect and ignores the plain language of the claims. For instance, claim 1 is directed to limitations including generating "a plurality of sequences of variable-amplitude pulses, each of the sequences having a different average amplitude value." Clearly, the Appellant *does* claim limitations directed to the amplitude of pulses within a single sequence being different (by the language "sequences of variable-amplitude pulses"). Each *sequence* of variable-amplitude pulses has a different average amplitude value. The Examiner's misinterpretation of these limitations has been the basis of confusion upon which the Section 102 and 103 rejections have been maintained.

As acknowledged by the Examiner on page 11 of the Examiner's Answer, the teachings of the '588 reference "means each sequence have (sic) a sequence of equal-amplitude of the pulse." In this regard, the '588 reference clearly teaches away from the claimed limitations of the instant invention directed to sequences of variable-amplitude pulses.

In view of the above, the Section 102 and 103 rejections are improper and must be reversed.

D. The Examiner failed to cite teaching or evidence in support of modifying the '588 reference in connection with the Section 103 Rejection.

Appellant further maintains that the Examiner failed to cite evidence of motivation as required for establishing a *prima facie* case of obviousness, for the reasons stated in the Appeal Brief and as follows. As discussed above in issue B, the Examiner failed to introduce any reference in support of the asserted Official Notice as previously requested by Appellant. The introduction of a new reference in the Examiner's Answer is improper and does not satisfy the requirements for maintaining the Section 103 rejection. Furthermore, the Examiner's attempt to provide motivation in support of combining the newly-cited reference with the '588 reference on page 13 of the Examiner's Answer is conclusory and unsupported by any evidence. Specifically, the Examiner asserted as motivation advantages that would allegedly be realized with the newly-cited reference, but failed to cite any evidence of motivation in the prior art for combining those advantages with the '588 reference. Therefore, the Section 103 rejection is improper and must be reversed.

II. CONCLUSION

Appellant maintains that the claimed invention is patentable over the cited references, and that the claim rejections must be reversed. Appellant respectfully requests from the Board of Patent Appeals that the above issues be addressed and incorporated into the rendering of your Decision.

Please charge Deposit Account No. 50-0996 (8X8S.239PA) if it is believed that additional fees are necessary in connection with the filing of this Reply Brief.

Respectfully submitted,

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